# The Indiana Prosecutor

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## PROSECUTOR WORKLOAD STUDY UNDER CONSIDERATION

The Board of Directors of the Association of Indiana Prosecuting Attorneys has voted to pursue the possibility of signing a contract with the American Prosecutors Research institute and initiating a workload study within Indiana prosecutors' offices. This study would establish empirical data to support the need for additional staffing within prosecutors offices around the state. Both the workloads of prosecutors and support staff would be studied under this evaluative plan.

A letter was recently sent by the steering committee for this study seeking voluntary monitary contributions from Indiana prosecutors to fund this project. Such contributions could be taken from discretionary funds, the letter suggests. Counties have been asked to respond to IPAC by mid-November as to their willingness actively participate in this caseload study.

A list of answers to the most frequently asked questions regarding such a study were sent to each prosecutor's office with the steering committee's letter. Further questions may be directed to IPAC Executive Director Stephen J. Johnson by telephone, (317) 232-1836 or by e-mail at sjohnson@pac.in.gov .

If adequate funding sources are found, it is anticipated that the caseload study would commence in early 2005.

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# 2004 Winter Conference

## December 5-8

## Indianapolis Marriott Downtown

### Deadline to Register: November 5, 2004

Billie Creek Covered Bridge

Parke County, Indiana

Inside this issue:



Milroy Covered Bridge

Rush County

# Recent Decisions Update

## Indiana

- **The Latest on "Anonymous Tips"**

***Kellems v. State* , ___ N.E2d ___ (Ind. Ct. App. 10/7/04)** On March 20, 2002, the Tell City Police Department received a call from a woman who identified herself as "Dodie McDonald". The caller reported that Luke Kellems was driving from Troy to Tell City and that he did not have a valid driver's license or insurance. The caller also told the police that Kellems was intoxicated and had children with him in his vehicle. Further, the caller provided a description of Kellems' vehicle and a license plate number.

A truck matching the description given was soon located by Sgt Lynn Wooldridge. As he approached the truck, Wooldridge recognized the driver as Luke Kellems. Before he stopped the truck Wooldridge also confirmed that the vehicle's license plate number matched the one the caller had provided. Kellem's wife and child were also observed sitting in the truck.

Kellems was able to produce identification, but not a driver's license. A computer check indicated that Kellems was an habitual traffic offender and that his license was suspended. Further, Wooldridge discovered that Kellems did not have insurance on the vehicle he was driving; nor was the truck legally plated.

At Kellems' suppression hearing Sgt Wooldridge acknowledged that he stopped Kellems' vehicle based solely upon the call received by dispatch. Kellems contended that there was no showing that the caller was reliable or that her identity was verified prior to the stop. Therefore, Kellems argued, the officer did not have the requisite reasonable suspicion needed to stop his truck. The Court of Appeals agreed.

The person who called dispatch identified herself as "Dodie McDonald" and gave her date of birth. In theory, the Court acknowledged, the caller could have been held legally responsible if she made a false police report. Wooldridge testified at the suppression hearing that while he did not know the caller personally, he "knew of her on different calls," and knew that she lived with a man named Richard Board. This was not enough to satisfy the Court of Appeals. They noted deficiencies in the call, including the fact that there was no evidence presented that revealed the basis for the caller's knowledge. Most significantly, the Court said, no evidence was presented that the officer or dispatch verified the caller's identity prior to the stop. Therefore, the Court of Appeals concluded, when the officer stopped Kellems' vehicle, he did not know whether the caller was actually McDonald, a prankster, or an imposter and the call was, therefore, not very reliable.

Having concluded that the tip had a relatively low degree of reliability, the Court then turned to the determination of whether other information, namely police corroboration, established the requisite level of suspicion needed to support the officer's stop of Kellems vehicle. None of the information which was corroborated by the stopping officer, the Court said, predicted Kellems' future behavior. Rather, it consisted of easily obtained facts and conditions existing at the time of the tip. While it was possible that the caller knew Kellems would be driving from Troy to Tell City because she was privy to his itinerary, it was just as possible that she had observed Kellems and his family en route and made the call at that time, the Court concluded. None of the information Sgt. Wooldridge corroborated showed that Kellems had engaged in or was about to engage in criminal activity, the Court concluded. Given the totality of the circumstances, the Court concluded that the tip did not contain the requisite indicia of reliability. As a result, Kellems' motion to suppress should have been granted, the Court of Appeals held.

- **"Blakely Applies" Says the Court of Appeals**

*Krebs v. State*, ___ N.E.2d ___ (Ind. Ct. App. 10/20/04) Lesley Krebs appealed his convictions after a jury trial on three counts of Class A Felony child molestation, a Class B Felony sexual misconduct with a minor conviction and his conviction for battery, as a Class A Misdemeanor. One of the issues he raised was whether the trial court properly enhanced Krebs' sentences. Krebs argued that the trial court's imposition of a one hundred year sentence was inappropriate and disproportionate. The Court of Appeals did not address these issues, but instead evaluated *sua sponte* the constitutionality of Krebs' sentence under the United States Supreme Court's decision in *Blakely v. Washington* (2004).

The Court of Appeals interpreted *Blakely* to hold that the Sixth Amendment requires a jury to determine beyond a reasonable doubt the existence of aggravating factors used to increase the sentence for a crime above the presumptive sentence assigned by the legislature. Accordingly, the Court of Appeals reasoned, "it appears our trial courts no longer have discretion to sentence a criminal defendant to more than the presumptive sentence unless the defendant waives his right to a jury at sentencing, a jury first determines the existence of aggravating factors, or the defendant has a criminal history."

The trial court in the within cause, elevated Krebs' sentence because the crimes of which he was convicted were particularly heinous; he violated a position of trust, and the pattern of the crimes of which he was convicted suggested that the defendant would probably commit this kind of crime again.

The trial court enhanced Krebs' sentences based on factual findings without a jury making those findings beyond a reasonable doubt. That procedure violated Krebs' Sixth Amendment right to trial by jury, the Court of Appeals held. One count upon which Krebs was convicted was reversed as the result of insufficient evidence, the remainder of his convictions were affirmed but the case was remanded for sentencing proceedings consistent with *Blakely*.